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MINUTES
MARCH 29, 2007

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order via teleconference by Chairman Russell at 9:07 a.m., on Thursday, March 29, 2007, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present in Helena: Robin Shropshire and Larry Mires

Board Members Present via Telephone: Chairman Joseph Russell, Don Marble, Heidi Kaiser and Gayle Skunkcap

Board Attorney Present: Katherine Orr, Attorney General's Office, Department of Justice

Board Members Absent: Bill Rossbach

Board Secretary Present: Elois Johnson

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers, Deputy Director; John North, Chief Legal Counsel;

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Robin Meguire, Montana Environmental Information Center;

I.A.1 | Review and approve January 26, 2007, meeting minutes.

Mr. Mires MOVED to approve the January 26, 2007, meeting minutes. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.A.1.a | In the matter of CR Kendall Corporation's request for a hearing to appeal DEQ's decision to deny a minor permit amendment under the Metal Mine Reclamation Act, BER 2002-09 MM.

Discussion took place as to why this matter has been stayed for so long. Ms. Orr indicated that both parties had requested the stay and did not inform her of the reasons for the stay. She said she will obtain a status report from the parties before the next meeting.

II.A.1.b | In the matter of violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.

Ms. Orr had no further information beyond that provided in the agenda.

II.A.1.c | In the matter of the issuance of the Air Quality Permit for the Roundup Power Project, Permit No. 3182-00, BER 2003-04 AQ.

Ms. Orr had no further information beyond that provided in the agenda.

II.A.1.d | In the matter of the request for hearing of Kountry Korner Enterprises, d/b/a Kountry Korner Café, regarding violations of the Montana Public Water Supply Laws, BER 2006-09 PWS.

Ms. Orr had no further information beyond that provided in the agenda.

II.A.1.e | In the matter of the Montana Environmental Information Center's appeal of Air Quality Permit No. 3182-01, issued for the Roundup Power Project, BER 2005-21 AQ.

Ms. Orr said Bull Mountain filed a motion to dismiss the matter on March 13. She said MEIC opposed the motion and that she would be ruling on the matter soon.

II.A.1.f | In the matter of the appeal by Willow Creek Sewer District regarding violations of the Water Quality Act, BER 2006-13 WQ.

Ms. Orr had no further information beyond that provided in the agenda.

II.A.1.g | In the matter of the Notice of Appeal and Request for Hearing of the Citizens Awareness Network, Women's Voices for the Earth, and the Clark Fork Coalition regarding DEQ's approval of the Thompson River CO-Gen, LLC, Air Quality Permit No. 3175-04, BER 2006-18 AQ.

- Ms. Orr said there were a lot of motions pending. She said she had held a hearing with the parties and their counsel on March 27 and that she would be issuing proposed orders. She said the case is set for hearing in May.
- II.A.1.h In the matter of violations of the Metal Mine Reclamation Act by Marty J. and Sinda M. Puryer, as individuals and d/b/a Paul Kurth Mining, for the failure to post reclamation bond, BER 2006-21 MM.
- Ms. Orr said a hearing for this case has been set for July.
- II.A.1.i In the matter of the appeal by Dan Fuchs, Broken 7 Subdivision, regarding Gallatin City-County Health Department's denial of a request to change a provision of the original certificate of subdivision approval, BER 2006-22 SUB.
- Ms. Orr said a request to stay the matter had been filed March 9 to allow for settlement discussions and that she would be issuing an order to grant that request.
- II.A.1.j In the matter of the appeal by the City of Bozeman regarding the DEQ's final decision for MPDES Permit No. MT0022608, BER 2006-23 WQ.
- Ms. Orr had no further information to provide regarding this case.
- II.A.1.k In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by BMP Investments, Inc., at the Bull Mountains Mine #1, BER 2006-24 SM.
- Ms. Orr said the parties had filed a stipulation to dismiss the matter on March 23, so the case would be presented for dismissal at the next meeting.
- II.A.1.l In the matter of the appeal by the Butte-Silver Bow Public Works Department regarding final MPDES Permit No. MT0022012, BER 2006-27 WQ.
- Ms. Orr had no further information to provide regarding this case.
- II.A.1.m In the matter of violations of the Water Quality Act and the Public Water Supply Laws by Brady County Water and Sewer District, BER 2006-29 WQ.
- Ms. Orr had no further information to provide regarding this case.
- II.A.1.n In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Westmoreland Resources, Inc., d/b/a Western Energy Co., BER 2006-30 SM.
- Ms. Orr said she had set a scheduling order for this case on March 20 and had set a hearing for July 25, but that this is a case the Board is hearing, so she will need to reschedule that.
- Discussion took place regarding a date for the hearing and it was decided that the scheduling order would be amended to set the hearing for July 27, the date of the Board

- meeting, and that it could be rescheduled later if the agenda for the meeting became too large or if the hearing is anticipated to take more than a day.
- II.A.1.o In the matter of violations of the Water Quality Act at Cenex Harvest States fueling facility on Highway 83, Condon, BER 2006-28 WQ.
- Ms. Orr said the parties have reached a settlement in this case and that it will be on the next agenda for dismissal.
- II.B.1 Cases in Litigation -- In the matter of the Petition for Review of Hazardous Waste Final Permit No. MTHWP-03-01 issued to Flying J Petroleums, Inc., BER 2003-14 HW.
- Ms. Orr said she had spoken with the Clerk of Court and the new Judge was currently reviewing the Board's motion to dismiss.
- III.A.1 In the matter of the request for hearing of the Teton County Airport Commission regarding violations of the Montana Underground Storage Tank Act at the Choteau Airport, BER 2006-15 UST.
- Mr. Marble MOVED to authorize the Chair to sign the order dismissing the case. Ms. Shropshire SECONDED the motion. The motion CARRIED with unanimous VOTE.
- III.A.2 In the matter of the request for hearing of U.S. Customs and Border Protection regarding a notice of violation concerning the Del Bonita Border Station, BER 2006-16 PWS.
- Mr. Marble MOVED to authorize the Chair to sign the order dismissing the case. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.A.3 In the matter of violations of the Montana Underground Storage Tank Act at Elliston Store, BER 2006-20 UST.
- Mr. Mires MOVED to authorize the Chair to sign the order dismissing the case. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.B.1 In the matter of violations of the Clean Air Act of Montana by Flathead County, BER 2007-01 AQ.
- Chairman Russell recused himself from this matter and appointed Ms. Kaiser to act as Chair for this matter.
- Ms. Shropshire MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.B.2 | In the matter of the appeal by the Missoula County Public Works Department regarding MPDES Permit No. MT0020168 and DEQ's response to public comments and submitted documents regarding the permit.
- Mr. Marble MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.B.3 | In the matter of the appeal by Jill and Joseph Slevin regarding Gallatin County's denial of a request for waiver to build a home.
- Ms. Shropshire MOVED to appoint Ms. Orr as the permanent hearing examiner for this case. Mr. Mires SECONDED the motion. Discussion took place regarding the matter. Chairman Russell called for a VOTE and the motion CARRIED unanimously.
- IV. | General Public Comment
- Chairman Russell called for general public comment. There was no response.
- V. | Adjournment
- Mr. Marble MOVED to adjourn. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- The meeting adjourned at 9:38 a.m.

Board of Environmental Review March 29, 2007, minutes approved:

JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE